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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,654

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Edward Eytchison

Sony-05400

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03/26/2008

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EXAMINER

JUNG, DAVID YIUK

ART UNIT

PAPER NUMBER

2134

MAIL DATE

DELIVERY MODE

03/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/763,654

Applicant(s)

EYITCHISON ET AL.

Examiner

David Y. Jung

Art Unit

2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/88)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

CLAIMS PRESENTED

Claims 1-34 are presented.

Response to Arguments

Applicant's arguments filed have been fully considered but they are not persuasive.

Applicant, in the Remarks at pages 8-10, argues that a plurality of user action identification profiles are not taught by the prior art. Applicant lists claims at pages 1-7, 10-13 for comparison. Applicant is specially pointed to the previously cited (and currently cited) section of Davis: Section 3. This section discusses that the credit card fraud is detected. In order to detect credit card, the credit card profile must be used. A credit card profile is a user action identification profile. In order to detect credit card, a plurality of user action identification profiles must be used. Thus, this is not persuasive.

Perhaps Applicant wishes to mean something more specific with the phrase "a plurality of user action identification profiles" than the broadest reasonable interpretation. If so, Applicant is respectfully request to amend the claims.

As for the issues under 35 USC 101, the Office disagrees with Applicant that "identifying a user" in the sense of the claims is sufficient to meet the statutory requirements. See the new rejection under 35 USC 101 for more details.

CLAIM REJECTIONS

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Regarding claims 1-31, the claimed invention is directed to non-statutory subject matter. MPEP 2106 explains that "tangible" function refers to physical actions. Applicant seems to be arguing that "detecting, comparing, and using to identify a user" (such as identifying a suspect in a police lineup) fits this meaning of MPEP 2106. As noted in MPEP 2106.01, the statutory subject matter is limited to "process, machine, manufacture, or composition of matter." In the section "Nonfunctional Descriptive Material" of MPEP 2106.01, an example is given of a particular series of musical notes being read from memory and thereafter causes another defined series of notes to be played. This is statutory because the memory is read (a physical process) and the data is transformed (such as by mathematical algorithms) and played (a physical process). Where is, for example, such physical process in the claims? Where are the physical processes being functionally arranged with other physical processes? There is no physical process per se in identifying a suspect in a police lineup because a person does all this by personal action (solely limited to his own physical person and not use actual hardware in a functional manner). The Office respectfully requests that the claims may be amended to comply with MPEP 2106 or at least explain further in the

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context of MPEP 2106.01 which provides more specific guidance than the general guideline of 35 USC 101.

Regarding all presented claims, the relied references are as noted in the previous Office Action. Please see the previous Office Action for detailed citation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21, 25-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darrell and Davis.

Regarding claim 1, Davis teaches "A method comprising: detecting a user's electronic device activity pattern; comparing the detected activity pattern against a plurality of user action identification profiles, wherein each user action identification profile is associated with a particular unique user; and using the comparing (section 3. Application Space, e.g., credit card fraud detection which identifies patterns of credit card use)."

These passages of Davis do not teach "to identify the current user as being one of the particular users " in the sense of the claim.

Darrell teaches "to identify the current user as being one of the particular users (Figure 1, i.e., tracking and identification)" for the motivation of better tracking persons (section 1. Introduction, i.e., locate and track user).

Hence, it would have been obvious to those of ordinary skill in the art at the time of the claimed invention to combine the teachings of Darrell and Davis for the motivation noted in the previous paragraphs so as to teach the claimed invention.

Claims 1, 10, 11, 21, 27, 32, 33, 34 are independent claims.

The special features of claim 10 (detection etc.), claim 11 (system etc.), claim 21 (storing the activity pattern etc.), claim 27 (identification system with modules etc.) are taught by Darrell (section 4 Integrated Tracking, especially the second paragraph concerning collecting data and detection).

Regarding claims 2, 5-9, 12, 15-19, 25, 28, 29, 31, 32, (various user identifying), these features are taught by Darrell (section 4 Integrated Tracking, especially the second paragraph concerning collecting data and detection)

Regarding claims 3, 4, 13, 14, 20, 26, 30, 33, 34 (various scoring as to whether matches are reasonable), these features are taught by Davis (section 3. Application Space, e.g., credit card fraud detection which identifies patterns of credit card use)."

Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darrell and Davis and Seno.

Claims 22-24 depend from claim 21. Darrell and Davis teach as noted in the rejection of claim 21.

Thus, Darrell and Davis teach all but the special features of claims 22-24 (biometric features and password, etc.).

The special features of claims 22-24 (biometric features and password, etc.) are taught by Seno (section I. Introduction, i.e., finger print, iris, passwords, etc.) for the motivation of user authentication ((section I. Introduction).

Hence, it would have been obvious to those of ordinary skill in the art at the time of the claimed invention to combine the teachings of Darrell and Davis and Seno for the motivation noted in the previous paragraphs so as to teach the claimed invention.

Conclusion

The art made of record and not relied upon is considered pertinent to applicant's disclosure. The art disclosed general background.

Points of Contact

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

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or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-3836 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Jung whose telephone number is (571) 272-3836 or Kambiz Zand whose telephone number is (272) 272-3811.

/David Y Jung/

Acting Examiner of Art Unit 2134

David Jung

Patent Examiner

3/29/08

